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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

M.F.,

Petitioner,

v.

THE SUPERIOR COURT OF  
SAN BERNARDINO COUNTY,

Respondent;

SAN BERNARDINO COUNTY  
CHILDREN AND FAMILY SERVICES,

Real Party in Interest.

E057348

(Super.Ct.No. J238248)

OPINION

ORIGINAL PROCEEDINGS; petition for extraordinary writ. Cheryl C. Kersey,  
Judge. Petition denied.

Dennis Moore for Petitioner.

No appearance for Respondent.

Jean-Rene Basle, County Counsel, and Jeffrey L. Bryson, Deputy County Counsel, for Real Party in Interest.

Petitioner M.F. (Mother) filed a petition for extraordinary writ pursuant to California Rules of Court, rule 8.452, challenging the juvenile court's order terminating reunification services as to her 23-month-old daughter, H.M. (the child), and setting a Welfare and Institutions Code section<sup>1</sup> 366.26 hearing.<sup>2</sup> Mother argues that the juvenile court erred in finding that there was sufficient evidence that Mother posed a substantial risk of detriment if the child was returned to her custody. We reject this contention and affirm the judgment.

## I

### FACTUAL AND PROCEDURAL BACKGROUND

The child came to the attention of the San Bernardino County Children and Family Services (CFS) in April 2011 after Mother was arrested by the Apple Valley Sheriff's Department. Mother had called 911 stating that she was being held at gunpoint while being driven in a vehicle, and that the child was with her and had stopped breathing. A ground and aerial search by four law enforcement agencies ensued. Mother was eventually found driving her vehicle with the then one-month-old child sitting in an unsecured car seat. Mother appeared to be under the influence of alcohol and drugs. When Mother was placed in the backseat of a patrol car, she kicked out the back window.

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

<sup>2</sup> The father is not a party to this appeal.

Mother was arrested for child endangerment, felony vandalism, misuse of 911, falsely reporting a crime, and driving under the influence. The child was released to her maternal great aunt. However, after discovering the maternal great aunt, as well as the maternal great grandmother both had extensive child welfare histories with CFS, the child was placed in protective custody.<sup>3</sup>

Mother, who was born in 1986, was raised primarily by her grandmother, R.L., due to her parents' neglect, drug addiction, and physical and sexual abuse in their home. She was also a dependent of the court and had a dependency case in San Bernardino County from 1990 to 1992. Mother also has two older children who have open dependency cases due to Mother's neglect and caretaker absence/incapacity.<sup>4</sup> Her first child was born in December 2003 and her second child in May 2009. All three children have different fathers.

The alleged father of the child is B.M. (Father), who was a ““crack”” addict. In March 2011, Father and another man “followed, beat and stabbed” Mother when she was returning home from shopping. Mother subsequently reported the incident to the police and changed her residence.

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<sup>3</sup> We note that the social worker's reference to K.L. as a “paternal grandmother” is in error.

<sup>4</sup> Mother's two older children were removed from her care in December 2010 while she was receiving services for them. A contested jurisdictional/dispositional hearing in their case was set for April 28, 2011.

On April 5, 2011, a petition was filed on behalf of the child pursuant to section 300, subdivisions (b) (failure to protect), (g) (no provision for support), and (j) (abuse of sibling). At the detention hearing, the child was formally removed from her parents and placed in the same home as her half siblings. The parents were offered services and visitation.<sup>5</sup>

The social worker recommended that the allegations in the petition be found true and that reunification services be offered to Mother. Mother was still incarcerated as of late April 2011. The child's maternal great grandmother and maternal great uncle were also incarcerated in the same jail. Mother initially denied calling 911, despite audio recordings and written police reports of the incident, claiming that she had called 911 because she was having an "anxiety attack" and that everything was a "misunderstanding."

The jurisdictional/dispositional hearing was held jointly for Mother's three children on June 14, 2011. The juvenile court found the allegations in the petitions true as amended and declared the children dependents of the court. Mother was offered visitation and reunification services and was ordered to participate in the court-approved case plan. Mother's case plan required her to undergo a psychological evaluation, attend general counseling, attend counseling to address sexual abuse of the older children and her past sexual abuse history, complete a parenting education program, random drug testing, and attend an outpatient substance abuse program in the event of a test failure or a positive drug test.

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<sup>5</sup> The whereabouts of Father were unknown.

By the six-month review hearing, the social worker recommended continuing Mother's services for an additional six months and proposed a revised service plan. Mother had been provided with multiple referrals to services and was participating and making significant progress in her case plan. She had completed counseling to address the sexual abuse issues with Michele Martin, Psy.D. Dr. Martin recommended that Mother may benefit from additional counseling if she continued to experience high levels of anxiety or distress. Mother had also completed a parenting/anger management program, was randomly drug testing, and had attended Narcotics Anonymous and Alcoholics Anonymous classes. She was also in the process of completing a psychological evaluation. However, she had not secured stable housing and was residing in a motel. Mother's revised service plan included on-demand drug testing and general counseling "to continue therapy to address therapist statement that [she] may benefit from further services" with frequency and duration to be determined by therapist.<sup>6</sup>

The child and her half siblings remained in the same foster home with Mr. and Mrs. C. and were doing well. Mother was regularly visiting the children once a week, and was "appropriate" during the visits. She was described as being "affectionate and attentive" with the children.

Mother participated in a psychological evaluation with Roger Morgan, Psy.D., in early December 2011. She told the doctor that she was still receiving Social Security Disability from a childhood accident, and she had never had a job. Dr. Morgan noted that Mother "had great difficulty with performing serial sevens and trying to identify the

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<sup>6</sup> Mother signed the revised proposed plan on November 23, 2011.

abstract principles associated with several common proverbs.” Mother was taking medication to combat her severe anxiety disorder, and her intellectual functioning was in the low average range. Dr. Morgan diagnosed Mother with having panic disorder, adjustment disorder with depressed mood, and possible residuals from brain injury in her early childhood. Dr. Morgan concluded that there were no clear indications of any major mental disorder that would prevent Mother’s ability to parent and that her anxiety level should be amenable to treatment. However, counseling was recommended to more fully address Mother’s anxiety levels and her choices in “love interests.” Dr. Morgan explained that Mother had had “difficulty with choosing men, citing problems with domestic violence and drug involvement.” Dr. Morgan further noted that Mother may also “benefit from an evaluation for cognitive functioning based on her history to ascertain residual levels of cognitive impairment associated with a probable brain injury in her early childhood, which she does not appear to understand.”

On December 14, 2011, the juvenile court continued Mother’s reunification services. At that time, the juvenile court also ordered CFS to liberalize visitation to unsupervised, including overnights and weekends. CFS was also authorized to return the children to Mother’s care on a family maintenance plan.

By the 12-month review hearing, the social worker recommended continuing Mother’s reunification services as to the child. Mother had been testing negative for substance abuse but continued to struggle with maintaining stable housing. In addition, Mother had continued her relationship with Father, which was a concern because he had physically assaulted and stabbed Mother in the face. Mother was initially not honest

about the relationship and tried to hide him in her home. She had also allowed Father to be present on more than one occasion during the short time she had unsupervised visitation, resulting in her visits being changed back to supervised. The social worker noted that Mother “continued to demonstrate poor decision making abilities and has difficulty following the safety guidelines of unsupervised visitation as she has twice had unauthorized individuals present” at her unsupervised visits. Further, although Mother was authorized to visit her children for two hours a week, the visits usually only lasted one hour a week. Mother explained that she needed to leave early in order to catch the bus. However, her explanation was confusing because Father would drive her to the visits. Further, Mother’s conjoint counseling with her eldest child to address her daughter’s past sexual abuse and to recognize signs of potential perpetrators had been suspended by the therapist because Mother had over-questioned her daughter during the sessions.

Meanwhile, the children remained together in foster care with Mr. and Mrs. C. They were adjusting well emotionally, developmentally, and educationally. It was reported that they “love their foster parents.”

In a supplemental report to the court, the social worker noted that Mother had tested positive for benzodiazepines on three occasions in November and December 2011. She had also tested positive for opiates on January 5, 2012, and was a no show for her February 2012 drug test. Her drug test results for January 17 and March 8, 2012, were negative. The social worker also reported that Mother’s eldest child was “very happy and attached to her current caregiver and is beginning to discuss past sexual abuse.”

The 12-month review hearing was held on July 24, 2012. At that time, the juvenile court terminated Mother's services as to the child's half siblings, but provided Mother with additional services as to the child.<sup>7</sup> The juvenile court noted Mother's progress in her case plan was "moderate."

By the 18-month review hearing, the social worker recommended that Mother's services as to the child be terminated and that a section 366.26 hearing be set. The social worker noted that Mother "has not completed her Case Plan and has not demonstrated an ability to benefit from her services . . . ." The social worker was also concerned about Mother's inability to sever her relationship with Father, with whom she has had a long history of domestic violence. Additionally, Mother was unable to secure stable and appropriate housing. Mother's eldest child reported seeing Father near the visit locations, and believed he was continuing to transport Mother to the weekly monitored visits. In addition, the social worker was highly concerned with Mother's failure to participate in, and benefit from, individual counseling. Mother's therapist reported that Mother had been inconsistent in attending her counseling sessions, having at times "missed weeks of therapy," and failing to make progress or benefit from the therapy received. By failing to participate in counseling, Mother had not been able to address the issues that led to the child's removal. The social worker therefore believed that return of the child to Mother's care would create a substantial risk of detriment to the physical and/or emotional well-being of the child.

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<sup>7</sup> Mother's second child was returned to his father's care on family maintenance, and a section 366.26 hearing was set as to her first child.

Meanwhile, the child was continuing to thrive in the home of Mr. and Mrs. C, who were expressing an interest in adopting the child if she did not reunify with Mother.

The 18-month review hearing was held on October 24, 2012. At that time, Mother testified in her own behalf. Following argument from counsel, the juvenile court found that Mother had made minimal progress in her case plan and that reasonable services had been provided to Mother. The juvenile court also found that returning the child to Mother's custody would create a substantial risk of detriment to the child.

The juvenile court explained: "[I]t's either return or . . . set a .26 hearing. And at this point based on the evidence . . . I can't return this child. It's too much risk of a detriment. [M]other has struggled over the last 18 months with stability . . . [She has n]o stable home; family ties; assistance, . . . [and is not] being honest in therapy [or] handling the problems that brought her . . . to this point to begin with. [I]t's just one thing after another, and although I applaud her efforts, her most recent efforts, especially getting an apartment, working out transportation . . . it's just too late for this child. ¶¶

The last time in July, when [Mother was] in front of Judge Marshall, that was the time to really get it in gear and get the apartment and get your therapy sessions done, and you didn't; and I think a lot of it is the mental health issues that are going to continue to plague you . . . throughout your life, and I know you were struggling with it. You're not taking that medication, but it's still there, and I can see it. It's still there. . . . The other issue is the visitation. . . . I gave you a perfect opportunity to make my decision easy by being honest about why the father was in the location at the time you were visiting, and you decided to lie . . . . I'm sad about that because it tells me that you haven't gained an

insight into what caused the problems of the removal in the first place.” The juvenile court thereafter terminated reunification services and set a section 366.26 hearing.

## II

### DISCUSSION

Mother contends the juvenile court erred in finding she posed a substantial risk of harm to the child if she was placed in her custody. We disagree.

At the 18-month review hearing, there is a statutory presumption that a dependent child will be returned to parental custody unless the juvenile court finds, by a preponderance of the evidence, that the return of the child would create a substantial risk of detriment to the child’s safety, protection, or physical or emotional well-being.

(§ 366.22, subd. (a).) The department bears the burden of establishing that detriment.

(*Ibid.*) Consequently, the court is guided in making its determination by the department’s assessment contained in its status report of parental efforts to utilize the services provided and the resulting progress. (*Ibid.*) Parental failure to regularly participate and make substantive progress in court-ordered services constitutes prima facie evidence of detriment. (*Ibid.*)

In reviewing the juvenile court’s finding that return of the child would create a substantial risk of detriment, we apply the substantial evidence standard. (*Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 879-881.) In so doing, we resolve all conflicts in favor of the court’s determination and indulge in all legitimate inferences to uphold the court’s order. (*In re John V.* (1992) 5 Cal.App.4th 1201, 1212.) On the facts

of this case, as summarized above, we conclude substantial evidence supports the juvenile court's detriment finding.

Contrary to Mother's assertions, Mother's most recent case plan included a counseling requirement to address her anxiety issues and her poor choices in love interests.<sup>8</sup> By the time of the 18-month hearing in October 2012, Mother's participation in counseling was sporadic and not beneficial. For three months after December 2011 when Dr. Morgan recommended that Mother undergo counseling, Mother did nothing. Eventually, on March 9, 2012, Mother had one session of conjoint counseling with her eldest daughter to address past sexual abuses. However, that session was terminated due to Mother over-questioning her daughter during the session. Mother did attend three subsequent sessions, but then was not seen again until May 4, 2012. Mother's therapist reported that Mother had "missed weeks of therapy" and was "making no progress." Two months thereafter elapsed with no counseling. When Mother finally attended on August 27, 2012, the therapist observed that Mother was "talkative," "fidgety," and lacked insight. The therapist reported that Mother had not benefitted from therapy and her "future active participation is questionable." Mother's minimal participation in counseling was a critical factor in finding detriment. Mother's choice not to regularly

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<sup>8</sup> Mother claims that her case plan did not require her to undergo additional counseling unless she experienced additional stress or anxiety. For support, she relies on Dr. Martin's letter, which stated, Mother may benefit from further services "if [Mother] experiences additional distress or anxiety beyond what she feels she can manage." She also asserts that the counseling language in her case plan approved by the juvenile court at the 12-month review hearing remained unchanged. However, Mother ignores Dr. Morgan's letter, which came nearly seven months after the conclusions expressed by Dr. Martin. Dr. Morgan unequivocally recommended that Mother undergo counseling to address her anxiety issues and "choices of love interests."

participate in counseling left the juvenile court no choice but to decide that it would be detrimental to return the child to her custody.

Additionally, Mother's most recent case plan required her to show an ability to have custody of her child, follow the conditions of her visitation plan, provide a safe home, accept responsibility, and secure a stable home. Despite 20 months of services, Mother had still not addressed a plan for the child to safely return to her physical custody. She lied about her therapy status, renewing her relationship with Father, and bringing Father to visits in violation of the juvenile court's orders. She also appeared to have no clear insight on why the child was removed from her care. Furthermore, although by the 18-month review hearing Mother had secured a two-bedroom apartment, the record shows that Mother's living situation had been unstable since the inception of the case.

Mother contends that the juvenile court gave too much weight to her involvement with Father; that the petition did not contain domestic violence allegations; and that nine months had passed since Father's presence at a visit. However, even if domestic violence was not alleged in the petition, Mother fails to ignore the evidence in the record that Father had beat and stabbed Mother, and that Mother had renewed her relationship with Father. She also lacks insight into why renewing a relationship with Father would be detrimental to returning the child to her custody. While Mother argues an inference from the evidence that is contrary to the inference drawn by the court, our task is not to reweigh the evidence or select between competing inferences, but merely to determine if there was substantial evidence from which the juvenile court could reasonably reach the conclusion it did. (*In re S.C.* (2006) 138 Cal.App.4th 396, 415.) In this regard the

evidence was sufficient. Moreover, notwithstanding the claims Mother makes, the other evidence we reference above is substantial and sufficient to support the juvenile court's finding and a presumption of detriment.

In any event, the question of whether Mother had complied with her case plan only determines whether there is a prima facie showing of detriment. Even if a parent complies fully with the case plan, detriment still can be shown by other evidence. (*In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1141-1143.) The ultimate question is whether the parent has the capacity to provide for the child's safety and well-being at the time of the review hearing, not whether the parent has completed the case plan or corrected the problem necessitating dependency that determines whether the child should be returned to parental custody. (*Ibid.*; *In re Joseph B.* (1996) 42 Cal.App.4th 890, 901.)

Because there was substantial evidence that returning the child to Mother would create a substantial risk of detriment to her safety, protection, or physical or emotional well-being, the juvenile court did not err in refusing to return the child to Mother's physical custody and ordering the section 366.26 hearing. (§ 366.22, subd. (a).)

III

DISPOSITION

The petition for extraordinary writ is denied.

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RAMIREZ

P. J.

We concur:

RICHLI

J.

KING

J.